

SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION
SOUTH DAKOTA COSMETOLOGY COMMISSION
500 EAST CAPITOL AVENUE
PIERRE, SD 57501-7175

IN THE MATTER OF

Case K - 2018

HEADLINES ACADEMY INC.,
License No. SLC-00015

CONSENT AGREEMENT

Respondents

In consideration of the above matter and in exchange for dismissal of the Notice of Hearing and formal hearing, the undersigned parties do hereby consent and agree to the following:

BACKGROUND

1. Headlines Academy Inc. (“Headlines”) is a licensed Cosmetology School with the South Dakota Cosmetology Commission, located in Rapid City, SD. The School’s license number is SLC-00015.
2. On October 11, 2018, Commission inspectors performed an unannounced inspection under consent agreement M-2017.
3. During the inspection issues of concern were brought to the attention of Headlines.

UNDERSTANDINGS

4. Headlines is aware that they may choose to be represented by legal counsel in this matter and is represented by Sara Frankenstein and Matthew Naasz of Gunderson, Palmer, Nelson, & Ashmore, LLP.
5. Headlines is aware of and understands the nature of this matter and has been informed of its right to legal counsel, notice, hearing, and appeal, and that by agreeing to and signing this Consent Agreement, it waives all procedures and proceedings before the Commission to which it may be entitled under state or federal law regarding the October 11, 2018, inspection.
6. The Commission is not making a finding as to a violation of law or rule by Headlines Academy, Inc. In addition, this agreement is not considered disciplinary action.
7. Headlines understands that the terms of this Consent Agreement will be public.
8. Headlines understands that nothing in this Consent Agreement will be deemed to restrict the Commission from raising facts in reference to Headlines outside of those related to the October 11, 2018, inspection.
9. If this agreement is rejected by the Commission, disciplinary matters will proceed, Commission members Carlson and Stokes will continue to be recused, and Headlines will maintain its prejudice, bias, and all other claims, defenses, and arguments.

AGREEMENTS

10. In return for Headlines' agreement to the provisions of this Consent Agreement, the Commission agrees to dismiss the Notice of Hearing issued in this matter and cancel the formal administrative procedures.

11. Both parties agree that this Consent Agreement will constitute the final agency disposition of this matter.
12. Both parties agree that this Consent Agreement will end all parties' duties and commitments under the Consent Agreements in M-2017.
13. Both parties agree, in lieu of contesting this matter formally, to voluntarily accept the following terms and conditions for entry of this Consent Agreement:
 - a. Headlines, Lic. #SLC-00015, will be suspended for a period of 30 days beginning on the day this agreement is signed by the Commission.
 - b. The 30 days of suspension will be held in abeyance until this agreement expires on September 20, 2019, and Headlines Academy, Inc.'s school license will not be actively suspended, so long as the following conditions are met:
 - 1) Headlines agrees to voluntarily close all operations for one day on January 21, 2019;
 - 2) Headlines agrees to have all instructors attend a seminar put on by commission member Ugofsky outlining commission expectations under the statutes and administrative rules governing cosmetology.
 - 3) All instructors employed by Headlines at the time of Headlines signing this agreement, and that become employed prior to February 1, 2019, shall take the Barbicide Online Certification in infection control prior to February 1, 2019;
 - 4) Headlines will be subject to four (4) unannounced inspections, between the seminar in paragraph 13(c) and expiration of this

agreement, requiring its employees to abide by the statutes and administrative rules governing cosmetology;

1. The four (4) inspections do not include re-inspections due to a failed inspection; and
2. The inspections under this Consent Agreement do not replace the unannounced annual inspection.
3. Any re-inspections due to a failed inspection will occur as soon as possible after the period for Headlines to contest the violation has passed. If Headlines contests the violation, and it is upheld, re-inspection will occur as soon as possible after administrative proceedings have concluded.
 - a. Passing a re-inspection does not remedy the prior failed inspection.
 - b. Failure of a re-inspection will result in action and ability to contest under paragraph 15(a) and result in another re-inspection under paragraph 13(b)(4)(3).
 - c. Re-inspections do not count towards the four (4) inspections in paragraph 13(b)(4)(1).
- c. Before the seminar referenced in paragraph 13(b)(2) is held, commissioner Ugofsky will be trained by Department of Labor attorney Graham Oey regarding the content of the administrative rules governing cosmetology. This training includes how the inspection form used in the October 11, 2018, inspection does not, in places, comport with the requirements of the administrative rules, and

where historical interpretation of the inspection form by some inspectors did not comport with the administrative rules.

d. The commission agrees that the seminar referenced in paragraph 13(b)(2) must be attended by all west river inspectors utilized by the commission. The commission expectations taught at this seminar shall be the administrative rules of cosmetology, and the commission shall not teach any commission expectations that are in addition to or different from the administrative rules governing cosmetology. This seminar instruction will include a requirement that inspectors shall not rely solely on information from students in finding a violation. Rather, inspectors must ask cosmetology school staff prior to the end of the inspection about the existence or availability of facility equipment and tools, school policies or practices, and anything else that might constitute a violation.

e. The commission agrees to modify the school inspection form to ensure it comports with the administrative rules governing cosmetology.

f. At its next opportunity to do so, the commission agrees to propose new or revised administrative rules to govern automatic failures in an inspection, how re-inspections are utilized, and the number of violations necessary to fail an inspection.

14. Headlines agrees that if any of its employees fail to comply with the provisions of paragraph 13(b)(1) and 13(b)(2), the 30 days of suspension may be imposed. Closure would occur after receiving notice from the Commission's Executive Director of non-compliance with the applicable provision, unless contested by Headlines within 10 days of receiving the notice.

15. Both parties agree that a failed inspection requires inspectors to document four (4) violations of statutes or administrative rules by employees on the school inspection report. Violations can be multiple violations of the same statute or administrative rule. Items marked as automatic failures on the inspection form must be corrected within 2 hours of inspectors informing Headlines of the violation but will not otherwise constitute an automatic failure.

- a. Failed inspections will result in the following actions:
 - 1) First Failed Inspection: All instructors employed by Headlines at the time of the failure will be required to take the Milady Online Infection Control Course and will meet with a commission member and inspector to discuss the violations. Meeting with Commission counts as re-inspection under 13(b)(4)(3).
 1. If Headlines does not contest the failed inspection, the course must be completed within 20 days of notice of the violation by the Commission Executive Director. If Headlines contests the failed inspection but it is upheld through a final determination through administrative procedures, the course must be completed within 20 days after the final determination through administrative procedures;
 2. The meeting with a commission member and staff will be scheduled considering the commission member's availability. The commission member will make reasonable accommodations to not disrupt school operations.

- 2) Second Failed Inspection: If Headlines does not contest the failed inspection, the 24-hour closure will begin when Headlines is notified by the Commission Executive Director. If Headlines contests the failed inspection but it is upheld in a final determination through administrative procedures, the 24-hour closure will begin when Headlines is notified by the Commission Executive Director after such final determination through administrative procedures; and
- 3) Third or Subsequent violations: If Headlines does not contest the failed inspection, the 72-hour closure will begin when Headlines is notified by the Commission Executive Director. If Headlines contests the failed inspection but it is upheld in a final determination through administrative procedures, the 72-hour closure will begin when Headlines is notified by the Commission Executive Director after such final administrative determination;

16. If Headlines chooses to contest any failed inspection or allegation of non-compliance with paragraphs 13(b)(1) and 13(b)(2) Headlines must notify the Commission Executive Director by email within 10 weekdays after notice is given of the failure. The expiration of this Consent Agreement will toll while the failed inspection or allegation of non-compliance with paragraphs 13(b)(1) and 13.(b)(2) is being contested.

17. Any other violations by, or complaints filed against Headlines that are not associated with inspections under this Consent Agreement will be handled outside of and will have no effect on this Consent Agreement.

18. Headlines has read, understands, and agrees to this Consent Agreement and is freely and voluntarily signing it. This Consent Agreement contains the entire agreement between the parties relating to the matters referenced in the Consent Agreement. Headlines is not relying on any other representations of any kind, verbal or otherwise.
19. Both parties agree to abide by this Consent Agreement in good faith. The Commission specifically agrees that no commission members and no commission staff, including inspectors, will take retaliatory action against Headlines, its staff and/or students in an effort to undermine this Consent Agreement or for any other reason.
20. If this Consent Agreement is approved by the Commission, a copy of the executed Consent Agreement will be served by electronic mail on Headlines' attorney, Sara Frankenstein, by electronic mail at sfrankenstein@gpna.com.

Dated this _____ day of _____, 2018.

South Dakota Cosmetology Commission

Chairperson

I, Peggy Sproat, a representative of Headlines Academy, Inc., have read and understand the terms of this Consent Agreement and I understand that I am waiving Headlines Academy, Inc.'s due process rights and right to a hearing regarding the October 11, 2018, inspection. Headlines Academy Inc. is voluntarily entering into this agreement.

Dated this 18 day of Dec, 2018.

Peggy Sproat
Headlines Academy Inc. Representative
School License No. SLC-00015